

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DENISE R. REED,

Petitioner,

v.

NATIONAL ASSOCIATION OF SECURITIES
DEALERS, INC., WHITE PACIFIC
SECURITIES, INC. and ROY L. PANELLI,

Respondents.

No. C 07-3648 CW

ORDER DENYING
PETITIONER'S
MOTION FOR AWARD
OF ATTORNEYS'
FEES

Attorneys for Petitioner Denise R. Reed have filed a motion for an award of attorneys' fees against Respondent White Pacific Securities, Inc. (WPS). Respondent WPS opposes this motion. Having considered all of the papers filed by the parties, the Court DENIES Petitioner's motion.

BACKGROUND

On May 4, 2004, Petitioner, a stockbroker, brought an arbitration action against Respondent WPS, a brokerage firm, before

1 a National Association of Securities Dealers (NASD)¹ arbitration
2 panel in San Francisco, California. Petitioner asserted that
3 Respondent WPS had breached the terms of their Independent
4 Contractor Agreement (Agreement) and filed erroneous and defamatory
5 statements about her with the Central Registration Depository
6 (CRD). (Toleno Decl. Ex. B, Arbitration Award at 1-2.) On June 5,
7 2007, the panel issued an arbitration award, finding that
8 Petitioner was the prevailing party. (Id. at 3.) The panel
9 thereby granted expungement of erroneous statements from the CRD
10 database² and assessed attorneys' fees of \$158,719.10 and costs of
11 \$5,228.70 against Respondent WPS, under an attorneys' fees clause
12 in the Agreement. (Id. at 4-5.)

13 On June 27, 2007, Respondent WPS requested that the panel
14 modify or eliminate the award of attorneys' fees.³ (Toleno Decl.
15 Ex. C, Motion to Modify Award.) On July 6, 2007, Petitioner wrote
16 a letter in opposition to the request. (Id.)

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19 ¹In July, 2007, after Petitioner commenced her action, the
20 NASD merged with the New York Stock Exchange, and is now known as
21 the Financial Industry Regulatory Authority (FINRA). FINRA is a
22 self-regulatory organization, registered as a national securities
23 association, to carry out regulatory duties under the Securities
24 Exchange Act, and subject to oversight by the Securities and
25 Exchange Commission (SEC). 15 U.S.C. § 78o-3. FINRA's rules,
26 including those pertaining to arbitration procedure, are approved
27 by the SEC. 15 U.S.C. § 78s.

28 ²The CRD is a national database of information concerning
brokerage firms and individual brokers. Although Respondent WPS
filed the erroneous information, Respondent FINRA maintains the
CRD, so the expungement must be performed by Respondent FINRA.

³Petitioner does not dispute Respondent WPS's contention that,
following the arbitration, the awarded amount was placed in escrow
pending resolution of the request to modify the award.

1 On July 16, 2007, and in an amended petition on July 24, 2007,
2 Petitioner sought confirmation of the arbitration award in this
3 Court.⁴ Petitioner requested that the award be confirmed, in its
4 entirety. Petitioner also sought interest on the awarded
5 attorneys' fees, as well as additional attorneys' fees and costs
6 incurred in bringing the petition.

7 On July 26, 2007, the NASD arbitration panel denied Respondent
8 WPS's June 27 request to modify the award. (Toleno Decl. Ex. C.)

9 On August 1, 2007, Respondent WPS paid Petitioner the
10 attorneys' fees that had been granted in arbitration. On August
11 10, 2007, Respondent paid Petitioner an additional \$2,480.07 in
12 interest.⁵

13 On September 25, 2007, in its answer to the petition,
14 Respondent WPS requested that the Court deny the portion of the
15 petition concerning attorneys' fees in excess of the arbitration
16 award and grant confirmation of the expungement agreement.

17 On October 10, 2007, the Court entered judgment in accordance
18 with a stipulated order between Petitioner and Respondent FINRA,
19 confirming sections 3b through 3g of the award, in which Respondent
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21
22 ⁴FINRA's rules specify that "persons seeking to expunge
23 information from the CRD system" must "obtain an order from a court
24 of competent jurisdiction directing such expungement or confirming
an arbitration award containing expungement relief." NASD Manual,
Code of Arbitration Procedure, Rule 2130(a) (2008).

25 ⁵FINRA's arbitration rules stipulate that fees and assessments
26 are to be paid immediately and a monetary "award shall bear
27 interest from the date of the award . . . if not paid within thirty
(30) days." NASD Manual, Code of Arbitration Procedure, Rule
10330(g)-(h) (2008).

1 FINRA agreed to expunge information from the CRA.⁶

2 On December 5, 2007, Petitioner filed a motion to recover an
3 additional \$42,140.54 in attorneys' fees against Respondent WPS,
4 the amount allegedly incurred in seeking the Court order and
5 collecting the fees awarded under arbitration.

6 DISCUSSION

7 Petitioner argues that Respondent WPS should pay the
8 "attorneys' fees, costs and expenses" incurred in recovering the
9 fees awarded in the arbitration, and seeking the Court's stipulated
10 order. Respondent WPS asserts that it does not owe Petitioner
11 attorneys' fees beyond those in the award and contends that the
12 motion is untimely under federal and local rules.

13 Unless otherwise provided by statute or court order, motions
14 for attorneys' fees "must be filed no later than 14 days after
15 entry of judgment; must specify the judgment and that statute,
16 rule, or other grounds entitling the moving party to the award."
17 Fed. R. Civ. P. 54(d)(2). Local Rule 54-6(a) specifies that,
18 unless otherwise ordered by the court, "motions for awards of
19 attorney's fees by the Court must be served and filed within 14
20 days of judgment by the District Court." One seeking an extension
21 of time must file a motion, pursuant to Local Rule 6-3, or
22 stipulation, pursuant to Local Rule 6-2.

23 A court may, for good cause, exercise its discretion to extend
24 the time limit for the filing of a motion to recover attorneys'

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26 ⁶The parties did not stipulate to Section 3a of the Award, the
27 expungement of criminal charges filed against Petitioner in
28 Tennessee. Petitioner continues to "work with" Respondent FINRA in
Tennessee state criminal court to obtain an order of expungement.

1 fees after the time limit has expired. Fed. R. Civ. P. 6(b)(B).
2 However, this is premised on a showing of excusable neglect. Id.
3 To determine whether neglect is excusable, a court must consider
4 four factors: "(1) the danger of prejudice to the opposing party;
5 (2) the length of the delay and its potential impact on the
6 proceedings; (3) the reason for the delay; and (4) whether the
7 movant acted in good faith." Bateman v. U.S. Postal Serv., 231
8 F.3d 1220, 1223-24 (9th Cir. 2000) (citing Pioneer Inv. Servs. Co.
9 v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993)).

10 Petitioner argues that Respondent WPS knew that the motion
11 would be filed and, therefore, was not prejudiced by the delay. On
12 June 5, 2007, a NASD arbitration panel awarded Petitioner her full
13 costs and attorneys' fees against Respondent WPS. Respondent WPS
14 disputed the award by requesting that the panel modify the amount
15 of attorneys' fees granted in the award. Petitioner submitted a
16 letter in opposition, but did not request that the panel award
17 additional attorneys' fees. After the panel denied Respondent
18 WPS's request, Respondent WPS did not further dispute the award,
19 and on August 1, 2007, it paid Petitioner \$158,797 in attorneys'
20 fees, pursuant to the award. Respondent WPS also acceded to
21 Petitioner's demand for an additional \$2,480.07 in interest, which
22 it paid on August 10, 2007. On October 10, 2007, when this Court
23 entered final judgment, confirmation of the award of attorneys'
24 fees against Respondent WPS was moot and Respondent WPS had
25 fulfilled its obligation to Petitioner under the arbitration award.

26 Although the stipulated expungement of Petitioner's erroneous
27 records is solely the province of Respondent FINRA and not within
28

1 the control of Respondent WPS, Petitioner seeks attorneys' fees
2 from Respondent WPS in relation to the stipulation. Petitioner
3 alludes to various delays encountered in Tennessee state criminal
4 court; however, this is irrelevant to the present matter. Because
5 this is a motion for attorneys' fees against a party who has no
6 control over compliance with the stipulated agreement, and in which
7 claimed fees continue to accrue over time, it is not clear that
8 allowing this motion would not prejudice Respondent WPS.

9 Petitioner provides no argument that the delay in filing this
10 motion was justified. The Court entered judgment on October 10,
11 2007, confirming the stipulated agreement between Respondent FINRA
12 and Petitioner. Respondent WPS did not oppose the stipulated
13 agreement. Petitioner's attorneys did not file the instant motion
14 until December 5, 2007--more than a month after the October 24,
15 2007 filing deadline--and they did not seek an extension of the
16 filing deadline. This, alone, justifies denial of this motion.
17 See In re Veritas Software Corp. Securities Litigation, 496 F.3d
18 962, 972 (9th Cir. 2007) ("[f]ailure to comply with the time limit
19 in Rule 54 is a sufficient reason to deny a motion for fees absent
20 some compelling showing of good cause").

21 Petitioner's sole remaining argument is that this motion
22 should not be rejected on purely procedural grounds.⁷ Petitioner

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24 ⁷Petitioner argues that she is entitled to additional
25 attorneys' fees based on her contract with Respondent WPS and the
26 underlying arbitration. Thus, it would appear that these
27 additional fees should be sought in arbitration. Petitioner has
28 not specified any "statute, rule, or other grounds entitling" her
to an award of additional fees in this Court. See Fed. R. Civ. P.
54(d)(2). Therefore, even if timely filed, Petitioner's motion
likely would have been denied.

1 cites only one case for the proposition that, "the purpose of the
2 14-day provision in Rule 54(d)(2)(B) is to assure that the opposing
3 party is informed of the claim before the time for appeal has
4 elapsed." Leidel v. Ameripride Services, Inc., 322 F. Supp. 2d
5 1206, 1210 (D. Kan. 2004). Leidel is a Kansas district court
6 opinion, which is not controlling here. Also, the dispute involved
7 a plaintiff who filed an application for an extension of the
8 fourteen day filing deadline, but had missed the filing deadline by
9 one day. Therefore, Petitioner's argument is inapposite.

10 CONCLUSION

11 For the foregoing reasons, Petitioner's motion for award of
12 attorneys' fees is DENIED.

13 IT IS SO ORDERED.

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15 Dated: 4/23/08



16 CLAUDIA WILKEN
17 United States District Judge
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